

# TERRENI

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June 16, 2021

The Honorable David F. Butler  
Chief Hearing Officer  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, South Carolina 29210

Re: ND-2021-22-S. Application of Condor Environmental, Inc. for an Expansion of its Existing Service Area to Include Certain Portions of Spartanburg County and Approval of Agreement and Establishment of Rates and Charges

Dear Mr. Butler:

Please accept this letter in response to your directive of June 11, 2021. ORS filed a letter with the Commission on June 9, 2021, stating it has no objection to Condor's motion to waive the filing requirements in S.C. Code Reg. 103-512.4. B (11) and (12).

In its letter, ORS also noted:

ORS would note this Application appears to request the establishment of new rates and charges. Therefore, the provisions of S.C. Code Ann. § 58-5-240, including the thirty days' notice requirement of S.C. Code Ann. § 58-5-240(A), also appear to apply to the Application<sup>1</sup>

<sup>1</sup> Docket No. 2020-192-S Commission Directive 2020-557 dated August 18, 2020.

Condor disagrees with ORS's interpretation of the law. At the outset, Condor notes the Commission's Directive 220-557, cited by ORS, does not support its position. The directive merely asked if the application in that docket should have been filed pursuant to S.C. Code Ann. § 58-5-240. It says nothing about the notice requirement of Subsection 240(A).

ORS advocates a departure from established practice for applications such as this one, filed under S.C. Code Ann. § 58-5-240(G). Subsection 240(G) states:

*Notwithstanding the provisions of this section*, the Commission may allow rates or tariffs to be put into effect without a hearing upon order of the Commission when such rates or tariffs do not require a

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determination of the entire rate structure and overall rate of return, or when the rates or tariffs do not result in any rate increase to the public utility, or when the rates or tariffs are for experimental purposes.

S.C. Code Ann. § 58-5-240(G) (*emphasis added*)

Subsection 240(G) carves out an exception from the requirements of the rate case statute for three types of applications that 1) do not require a determination of the company's entire rate structure and overall rate of return, 2) do not result in a rate increase, or 3) request tariffs for experimental purposes.

Condor's application fits into each category in Subsection 240(G). Condor requests to establish a new rate to serve an apartment complex, the first customer of this kind for the company. Condor is not asking to change any of its other rates or to change its approved operating margin. Condor's request would not result in a rate increase for any of its customers. Because this is the first apartment complex the company will serve, the request is also for approval of an experimental tariff.

ORS's interpretation of the statute would subject any request for the establishment of new rates and charges to the requirements of Subsection 240(A). This reading of the law is contrary to the plain language of the statute and would render the introductory words of Subsection 240(G)—"*Notwithstanding the provisions of this section*"—meaningless. A tribunal "...must assume the legislature intended to accomplish something through an enacted statute and did not engage in futile action." *Purvis v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 283, 288, 403 S.E.2d 662, 666 (Ct. App. 1991).

The problem with ORS's reading of the statute is exposed by applying it to its logical conclusion. If Subsection 240(A) applies to all new rate schedules filed under Subsection (G), so should the requirements of Subsections 240(B)-(F) and (H). Notably, a utility filing for approval of limited rates under Subsection 240(G) could not file for approval of other rates or bring another rate case for twelve months under Subsection 240(F).<sup>1</sup>

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<sup>1</sup> "After the date the schedule is filed with the commission and provided to the Office of Regulatory Staff, no further rate change request under this section may be filed until twelve months have elapsed from the date of the filing of the schedule; provided, however, this section shall not apply to a request for a rate reduction." S.C. Code Ann. § 58-5-240(F).

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With good reason, the Commission has historically not interpreted Subsection 240(G) (nor its counterparts in the other chapters of the code such as S.C. Code Ann. § 58-27-870(F))<sup>2</sup> in the manner proposed by ORS. If the Commission agrees with ORS, Condor could not file a general rate case within a year of this application. But the Commission's precedent would reach much further than Condor. Any gas, water, or wastewater utility desiring to implement a limited rate under Subsection 240(G) will be subject to the one-year stay-out provision of Subsection 240(F). Any electrical utility requesting approval of a rate schedule under S.C. Code Ann. § 58-27-870(F) would also be bound by the one-year stay-out provision of S.C. Code Ann. § 58-27-860. The Commission should reject a statutory construction that leads to an absurd result. *Hamm v. South Carolina Public Service Com'n*, 336 S.E.2d 470, 287 S.C. 180 (S.C. 1985)

The statute gives the Commission discretion to waive the statute's requirements ("the Commission *may* allow rates or tariffs..."), and it has historically done so. ORS offers no reason why the Commission should now deviate from past practice.

Condor found one instance in which there was a discussion between the Clerk's Office regarding the sufficiency of a letter of intent filed by JACABB utilities, but the Commission was not asked to rule on the issue.<sup>3</sup> Condor also filed letters of intent in some previous dockets of its own accord (e.g. Docket No. 2015-24-S). However, there is no indication the Commission required it to do so. Condor is also unaware of ORS previously taking the position it now advocates.

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<sup>2</sup> "Notwithstanding the provisions of Sections 58-27-860 and 58-27-870, the commission may allow rates or tariffs to be put into effect without notice and hearing upon order of the commission when such rates or tariffs do not require a determination of the entire rate structure and overall rate of return, or when the rates or tariffs do not result in any rate increase to the electrical utility, or when the rates or tariffs are for experimental purposes, or when the rates or tariffs so filed are otherwise necessary to obtain an orderly rate administration." S.C. Code Ann. § 58-27-870. The thirty-day notice requirement for electrical utilities is in S.C. Code Ann. § 58-27-860.

<sup>3</sup> Docket No. 2019-189-WS - Application of JACABB Utilities, LLC to Request to Establish Sewer Pass-Through Rates for JACABB Utilities, LLC and Approval of a Water System and Sanitary Sewerage Asset Purchase Agreement with Triangle Real Estate to Serve Rosewood at Clemson Development in the City of Clemson, South Carolina.

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Indeed, many other filings show applications not involving general rate cases were accepted without a letter of intent. For example:

<b>Docket No.</b>	<b>Caption</b>	<b>Type of filing</b>
Docket No. 2018-320-E; Order No.. 2021-63	Joint Application of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC to Establish Green Source Advantage Programs and Riders GSA	Application to establish riders for voluntary renewable energy programs. Application was accepted without a letter of intent and waiver of hearing was granted under Section 58-27-870.
Docket No. 2017-47-E Order No. 2017-453	Duke Energy Carolinas, LLC's Application for a Certificate of Public Convenience and Necessity for the Provision of Steam (Heat) Service and for Approval of a Contract with Clemson University	Application sought approval of new rates and conditions of service. Application was accepted without a letter of intent.
Docket No. 2018-321-E, Order No. 2020-645	IN RE: Application of Duke Energy Carolinas, LLC for Approval of Proposed Electric Transportation Pilot and An Accounting Order to Defer Capital and Operating Expenses	Application sought approval of experimental rates. No letter of intent was filed. Application was accepted without a letter of intent
Docket No. 2012-40-S; Order No. 2012-209	IN RE: Application of Midlands Utility, Inc. Requesting Modification of Its Tariff for Wastewater Service and Rate Adjustment to Residential and Commercial Customers in Richland, Lexington, Fairfield and Orangeburg Counties (Implementation of Analytical Testing Fee)	Application sought approval of new analytical testing fee. Application was accepted without a letter of intent.
2011-221-WS, Order No. 2011-481	IN RE: Application of CUC, Inc. for Modification of Its Tariff for Water Service and Rate Adjustment Request for Customers at Callawassie Island and Spring Island in Beaufort County, South Carolina	Application to increase rates to reflect new wholesale water cost. Application was accepted without a letter of intent.

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Condor urges the Commission to accept its application. However, If the Commission agrees with ORS, Condor asks the Commission to accept this letter as notice of Condor's intent to put in effect a new rate or charge in effect no sooner than thirty days from the date above.

With best wishes, I am,

Sincerely yours,

*s/ Charlie Terreni*

Charles L.A. Terreni

c: Counsel of record  
Mr. Brad Weaver

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